UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,811	04/06/2001	Stephen Gold	1509-165	6456

22879	7590	11/04/2005	EXAMINER

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TO, BAOQUOC N

ART UNIT	PAPER NUMBER
2162	

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
	09/826,811	GOLD ET AL.
Office Action Summary	Examiner	Art Unit	
	Baoquoc N. To	2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>26 May 2005</u>.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>21,22,25-28,30-33,35-38 and 40-42</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☒ Claim(s) <u>23,24,34 and 39</u> is/are allowed.

6) ☒ Claim(s) <u>21-22,25-28,30-33,35-38 and 40-42</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

1.   This Office Action responds to the Petition filed on 05/26/2005. The application

has been reconsidered and details explanations are in the respond to the argument.

Applicants are advised to respond to this Office Action or to reinstate of the appeal.

Claims 21-28 and 30-42 are pending in this application.

Response to Arguments

2.   Applicant's arguments with respect to claims 21, 30, 32, 36 and 39-40 have been

considered but are moot in view of the new ground(s) of rejection.

Applicant argues "comparing and determining steps of a particular client

computer to be backed up is not disclosed by Saxon."

Examiner disagrees with the applicant argument. As to Saxon discloses the

same concept for determining and comparing the total file set of all client computers

with the save set. In col. 5, lines 7-14, Saxon also discloses "the system also includes

one client and server and storage device, could be connected to the network 18 and the

backup scheduler 28 could control the backup of some or all of the devices on the

network 19." The backup system can just backup files for one device, some or all the

devices connected in network. The examiner also introduces the new reference (Morris)

in order to clarifying the backing up files for a particular client (col. 5, lines 9-20).

Therefore, one ordinary skill in the art would recognize that once the backup system

could determine and compare the total file sizes of a single client or total file size of the

all clients' files size to achieve the same purpose for backup.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed
> or described as set forth in section 102 of this title, if the differences between the
> subject matter sought to be patented and the prior art are such that the subject
> matter as a whole would have been obvious at the time the invention was made
> to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was
> made.

3.   Claims 21-21, 25-28, 30-32, 35-38 and 40-42 are rejected under 35 U.S.C.

103(a) as being unpatentable over Saxon (US. Patent No. 5,758,359) in view of Morris

(US. Patent No. 5,813,017).

Regarding on claims 21, Saxon teaches a method of backing up files of plural

client computers to a back up computer having a bulk storage device for storing files to

be back up of client computers each of said client computers comprising a data storage

device having a client data storage area storing files desired to be back up to the bulk

data storage device said method comprising:

Operating said back up computer so back up data stored in said client data

storage areas of each of said plurality of client computers is selectively back up in the

bulk storage device (many more devices including client server computers and storage

devices, could be connected to the network 18 and the backup scheduler 28 could

control the backup of some of all of the devices on the network, wherein the client could

be one of the device in the network" (col. 5, lines 9-13),

Determining if back-up to the bulk storage device is to be performed for the files

desired to be backed up of a particular client computer by performing the following steps

at each particular client computer "if the scheduler detects that the backup is scheduled

to occur 44, it determine what type of backup should occur" (col.. 7, lines 5-8):

(a)   maintaining a list of files of said particular client computer allocated for

backup (col. 7, lines 28-30);

(b)   maintaining total file data describing the size of each of said listed files of

the particular computer (col. 7, lines 28-30);

(c)   determining the total file size data describing the size of said listed files of

said particular client computer (one the new save set sizes have been computed, the

method computes a total size by adding together the new save set sizes) (col. 3, lines

3-5);

(d)   comparing said total file size data with predetermined size limit (the total

size is compared to the maximum size threshold to determine if the total size is less

than or equal to the maximum size threshold) (col. 7, lines 48-50); and

(e)   determining whether to back up said client files or not, depending on said

comparison between said total file size data and said predetermined size limit (if the

threshold has not been reached and there is no "next most recent save set" at step 64,

then the method is the illustrated embodiment terminate at step 70 since the method

cannot stay within the maximum size limit constraint and it is therefore likely that a

backup operation could not be performed in the allotted time" (col. 7, lines 60-66)). .

Saxon discloses the backup scheduler could control the backup of some or all of

the devices in the network (coll. 5, lines 1012); however, Saxon does not explicitly teach

backing up files for a single client in the plurality of clients. On the other hand, Morris

discloses the method of backing up files for a client in the network (col. 5, lines 9-20).

Therefore, it would have been obvious to one ordinary skill in the art at the time of the

invention was made to modify Saxon's system to include the method of backing up a

particular client in the network as taught by Morris in order to reduce transmission

bandwidth requirement in a client-server environment.

Regarding on claim 25, Saxon teaches maintaining a quota list, listing a plurality

of files stored in a back up region of said client computer, wherein for each said file

there are stored size data describing the size of said file (col. 7, lines 22-27).

Regarding on claim 26, Saxon teaches for the particular client computer,

summing the total of all said file sizes to obtain total file size data of files stored in the

back up storage are of said client computer (col. 7, lines 22-27).

Regarding on claim 27, Saxon teaches for the particular client computer, storing

a difference list listing differences between files backed up during a previous back up

process and files currently stored in the back up data storage area of said client

computer (col. 7, lines 30-40).

Regarding on claim 28, Saxon teaches the size of teach file is determined by

comparing a list of current files of the particular client computer desired to be back-up

with a list of files desired to be back-up for the particular client computer during the

immediately previous back-up, altering list for each changed file desired to be back up

for the particular client computer, for each deleted file for the particular client computer

removing the file from the list, for each added file for the particular client computer

adding the file to the list (col. 7, lines 45-65).

Regarding on claim 30, Saxon teaches a method of operating a back up computer, said back up computer comprising:

A data storage device (storage devices) for storing backup files of plural client computers (col. 5, lines 9-10);

said method comprising steps of selectively transmitting backup files of the client computer to the back up storage device;

Receiving at the backup computer total file size data (total size) for and from each of the client computers, each said total file size data representing the total file size at said client computer of files with the client computer desires to be backed up to said back up computer (col. 7, lines 46-60); and

For each said client computer, activating the backup computer to respond to the stored total size data so the back up computer determines a file size limit representing a limit of total file size for each said client computer, for which back up of files is permitted (col. 7, lines 46-60).

Saxon discloses the backup scheduler could control the backup of some or all of the devices in the network (coll. 5, lines 1012); however, Saxon does not explicitly teach backing up files for a single client in the plurality of clients. On the other hand, Morris discloses the method of backing up files for a client in the network (col. 5, lines 9-20). Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modify Saxon's system to include the method of backing up a particular client in the network as taught by Morris in order to reduce transmission bandwidth requirement in a client-server environment.

Regarding on claim 31, Saxon teaches transmitting from the backup computer to

the client computers the file size limit determined for each client computer (col. 7, lines

40-67).

Regarding on claim 32, Saxon teaches a method of operating a client computer,

said client computer comprising:

A data storage device (storage device) for storing files of the client computer,

said data storage device having a back-up data storage area from which files can be

sent for backup to a back up computer (col. 5, lines 5-14);

Said method comprising the step of:

Storing in said back-up data storage area files desired to be backed-up (col. 7,

lines 40-67);

Creating a list of files resident in said back-up data storage area (col. 7, lines 34-

40);

For each said file on said list, storing size data describing the size client file (total

file) (col. 7, lines 41-43);

Summing (computing) said plurality of file sizes to obtain a summed file size total

(col. 7, lines 41-43); and

Comparing (compared) said summed file size total (total size) with a size quota

limit (maximum size threshold) (col. 7, lines 47-65).

Saxon discloses the backup scheduler could control the backup of some or all of

the devices in the network (coll. 5, lines 1012); however, Saxon does not explicitly teach

backing up files for a single client in the plurality of clients. On the other hand, Morris

discloses the method of backing up files for a client in the network (col. 5, lines 9-20).

Therefore, it would have been obvious to one ordinary skill in the art at the time of the

invention was made to modify Saxon's system to include the method of backing up a

particular client in the network as taught by Morris in order to reduce transmission

bandwidth requirement in a client-server environment.

Regarding on claim 35, Saxon teaches comparing a list of current files in said

client back-up data storage area with a previously generated list of files representing the

status of files in said back-up client area at a previous time (col. 7, lines 45-60);

Identifying files which have changed between said current files list and said

previous file list (col. 7, lines 45-60); and

Generating a difference list listing said files that have changed between said

current file list and said previous files list (col. 7, lines 45-60).

Regarding on claim 36, Saxon teaches a client computer comprising:

A data storage device (storage devices) having a data storage area for files

which are subject to a back-up process (col. 5, lines 9-10);

An interface device (network) (col. 5, lines 9-10); and

A data processor (control the backup) (col. 5, lines 10-11) for managing back-up

of files in said backed-up data storage area, said data processor being arranged to (a)

send said files to a back up computer via said interface device (connected to network)

(col. 5, lines 9-10) (b) receive a first quota limit from an external source (total size is

compared to the maximum) (col. 7, lines 41-60), said first quota limit describing an

amount of data storage capacity said client computer is permitted to maintain in said

data storage area for files which are subject to a back-up process (col. 7, lines 41-60).

Saxon discloses the backup scheduler could control the backup of some or all of

the devices in the network (coll. 5, lines 1012); however, Saxon does not explicitly teach

backing up files for a single client in the plurality of clients. On the other hand, Morris

discloses the method of backing up files for a client in the network (col. 5, lines 9-20).

Therefore, it would have been obvious to one ordinary skill in the art at the time of the

invention was made to modify Saxon's system to include the method of backing up a

particular client in the network as taught by Morris in order to reduce transmission

bandwidth requirement in a client-server environment.

Regarding on claim 37, Saxon teaches data processor is arranged to receive a

second quota limit from an external source, said second quota limit describing an

amount of data storage capacity which said client computer is permitted to maintain in

said data storage area for files which are subject to a back-up process (col. 7, lines 45-

60).

Regarding on claim 38, Saxon teaches client data processor is arranged to:

Maintaining a quota list describing the amount of data allowed to be stored in

said data storage area for files which are subject to a back-up process (col. 7, lines 45-

60);

Maintaining a file list describing one or more files currently stored in said data

storage area for files which are subject to a back-up process (col. 7, lines 35-40);

Maintaining a previous file list (save set) describing a plurality of files previously

stored in said data storage are immediately prior to a last back-up operation carried out

by data processor for files which are subject to a back-up process (col. 7, lines 35-40);

and

Maintain a difference list storing data (new save list) describing differences

between files on said new file list, and files on said previous file list (col. 7, lines 35-40).

Regarding on claim 40, Saxon teaches a method of operating a client computer,

said client computer comprising:

A data storage device (storage device) for storing client files, said data storage

device having a back-up data storage area from which files can be sent to a back-up

computer for back-up (col. 6, lines 5-14);

Said method comprising the steps of:

Storing files desired to be back up to the back-up computer in the back-up data

storage area (col. 5, lines 5-14);

Maintaining a quota list (total size), said quota list comprising a list of files in said

back-up data storage area which were back up during a previous back-up operation

(col. 7, lines 22-28);

Backing up to the back-up computer said files stored in said back up data

storage area (col. 5, lines 5-14);

In response to said back up operation, modifying said quota list to list the actually

within a quota list (eliminating the most recent save by subtracting the "new" save set

size of the most recent save set 64) (col. 7, lines 52-55).

Saxon discloses the backup scheduler could control the backup of some or all of

the devices in the network (coll. 5, lines 1012); however, Saxon does not explicitly teach

backing up files for a single client in the plurality of clients. On the other hand, Morris

discloses the method of backing up files for a client in the network (col. 5, lines 9-20).

Therefore, it would have been obvious to one ordinary skill in the art at the time of the

invention was made to modify Saxon's system to include the method of backing up a

particular client in the network as taught by Morris in order to reduce transmission

bandwidth requirement in a client-server environment.

Regarding on claim 41, Saxon teaches producing a modified quota list

comprising list of files currently in said back up data storage area (subtract) (col. 7, lines

45-60); and

Determining from said modified quota list, whether performance of a back up

operation is within a quota list (col. 7, lines 45-60).

Regarding on claim 42, Saxon teaches the step of producing the modified quota

list comprises:

Generating a difference list (new list), said difference list listing details of files

which have difference between the current content of said backed up data storage area

and said quota list (col. 7, lines 35-45).

4.   Claims 21-22, 25-28, 30-33, 35-38 and 40-42 are rejected under 35 U.S.C.

103(a) as being unpatentable over Saxon (US. Patent No. 5,758,359) in view of Morris

(US. Patent No. 5,813,017) further in view of Jong et al. (6,192,403 B1).

Regarding on claim 22, Saxon teaches the step of determining whether or not to

back up said client data comprises:

Comparing (comparing) said total file size data with a first file size limit (col. 7,

lines 47-50);

If said total file size data exceeds said first file size limit, generating a warning

message indicating first file size limit is exceeded (col. 7, lines 50-57); and

Performing back up of said data files within said file size limit (col. 7, lines 50-57).

Saxon does not explicitly teach generating a message indicating file size

exceeds. However, Jong teaches generating a message indicating file size exceeds

(co. 9, lines 54-57). Therefore, it would have been obvious to one ordinary skill in the

art at the time of the invention was made to modify Saxon's system to include alerting

user when the file size exceed as taught by Jong in order to allow the user to reduce the

size or to stop the backup process.

Regarding on claim 33, Saxon teaches size quota limit comprises a first size limit

(col. 7, lines 45-65). Saxon does not explicitly teach said method further comprises the

step of warning at said client computer that said first quota limit is exceeded in response

to said summed total file size data exceeding said size quota limit. However, However,

Jong teaches warning at said client computer that said first quota limit is exceeded in

response to said summed total file size data exceeding said size quota limit (co. 9, lines

54-57). Therefore, it would have been obvious to one ordinary skill in the art at the time

of the invention was made to modify Saxon's system to include alerting user when the

file size exceed as taught by Jong in order to allow the user to reduce the size or to stop

the backup process.

Allowable Subject Matter

4.   Claim 39 is allowed over the prior art made of record.

The following is an examiner's statement of reasons for allowance: None of the prior art

alone of incombination neither suggest or teach "if performance of said back-up would

exceed said second predetermined quota limit, then prohibiting said back-up, and

generating a warning signal that said second predetermined quota limit would be

exceeded; and perform the backup if the first limit is not exceeded" and in conjunction

with "if it is determined that performance of said back up would cause said first

predetermined quota limit to be exceeded, but said second predetermined quota limit

not to be exceeded, then proceeding with said back-up, and generating a warning signal

warning that said first predetermined quota limit is exceeded, and each time a back-up

operation of said client computer is initiated, determining the total size of all files of said

client computer to be back up, and determining whether performance of said back-up

would cause first predetermined quota list limit to be exceeded, and if the first limit is

exceeded determining if performance of said back-up would cause a second

predetermined quota limit to be exceeded."

Any comments considered necessary by applicant must be submitted no later

than the payment of the issue fee and, to avoid processing delays, should preferably

accompany the issue fee. Such submissions should be clearly labeled "Comments on

Statement of Reasons for Allowance."

5.   Claims 23-24 and 34 are objected to as being dependent upon a rejected base

claim, but would be allowable if rewritten in independent form including all of the

limitations of the base claim and any intervening claims.

As to claim 23, none of the prior art alone or incombination neither teach or

suggest "comparing said total file size data with a second file size limit data; and if said

total file size data exceeds said second file size limit, then prohibiting back up said client

files."

As to claim 24, none of the prior art alone or incombination neither teach or

suggest "comparing said total size data with a second file size limit data; if said total file

size data exceeds said second file size limit, the prohibiting back up of said client files;

and generating a warning message said second file size limit is exceeded."

As to claim 34, none of the prior art alone or incombination neither teach or

suggest "size quota limit comprises a second quota limit; and said method further

comprises the step of: prohibiting back-up of least one file in said client back-up data

storage area in response to said summed file size data being greater that said second

quota limit data."

Contact Information

6.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Baoquoc N. To whose telephone number is at 571-272-4041 or via e-mail BaoquocN.To@uspto.gov. The examiner can normally be reached on Monday-Friday: 8:00 AM – 4:30 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached at 571-272-4107.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.
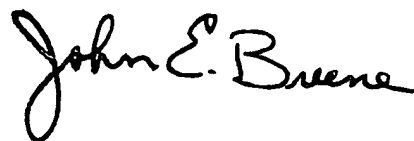
Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231.

The fax numbers for the organization where this application or proceeding is assigned are as follow:

(571) –273-8300   [Official Communication]

BQ To
Oct 6th, 2005

JOHN BREENE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100